

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

JEFFS ELECTRIC, LLC

and

**Case Nos. 34-CA-11371
34-CA-11398**

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 35, AFL-CIO**

Terri Craig, Esq., Counsel for the General Counsel.

Thomas Meiklejohn, Esq., Livingston, Adler, Pulda, Meiklejohn & Kelly, Counsel for the Charging Party.

Henry Jeffs, Jr., President and Sole Owner, Pro Se, for the Respondent.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on April 17, 2006 in Hartford, Connecticut. The Consolidated Complaint herein, which issued on February 28, 2006 and was based upon unfair labor practice charges that were filed on December 27, 2005¹ and January 12, 2006 by International Brotherhood of Electrical Workers, Local 35, AFL-CIO, herein called the Union, alleges that Jeffs Electric, LLC, herein called the Respondent, engaged in the following unfair labor practices in violation of Section 8(a)(1) and (3) of the Act:

- (a) On about July 18, at the Dunkin Donuts job site, interrogated employees concerning their Union activities;
- (b) On about December 27, at the Dick's Sporting Goods job site, threatened its employees with closure of the business due to their Union activities;
- (c) On about December 28, at the Dick's job site, interrogated employees regarding their Union activities;
- (d) At all relevant times during the six month period preceding the initial unfair labor practice charge, maintained an overbroad policy prohibiting employees from discussing wages and other terms and conditions of employment.
- (e) On about December 27, at the Dick's job site, informed employees that they were being subject to adverse employment actions because of their Union activities.
- (f) On about December 27, terminated employees Christopher Lacy, James Bramanti, Harry Richardson, Stephen Zajac and Joshua Solomonson because of their Union activities.
- (g) On about December 27, terminated employees Benjamin Holden because of his

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2005.

Union activities and because he discussed his wages with other employees.

5 Jeffs, in a letter to the regional office dated March 22, 2006, responded to these allegations. He does not dispute or deny the jurisdictional allegations contained in Paragraphs 2, 3 and 4 of the Complaint or the labor organization status of the Union as alleged in Paragraph 5 of the Complaint. He does deny the supervisory and agency status of Christopher Lord, alleged to be the construction supervisor and a supervisor and agent of the Respondent within the meaning of Section 2(11) and 2(13) of the Act. He also denies the Section 8(a)(1) allegations contained in Paragraphs 7 and 8 of the Complaint, stating:

10 At no time did I interrogate any employee regarding affiliation with a labor organization. After receipt of the letter notifying me of the desire to organize, I asked if any one had been approached about affiliating with a labor organization and all remaining employees stated that they had no interest in becoming affiliated and that they had not been
15 approached. I never subjected any employee to harassment, threats or intimidation.

As regards the terminations, Jeffs' letter states:

20 I would like to point out that the legal basis I made my decisions on was based on the Immigration Reform and Control Act of 1986. The Act states that employers are subject to civil and criminal penalties for hiring persons without proof of eligibility to work. I believe that I was justified in the termination of James Bramanti, Christopher Lacy, Harry Richardson and Joshua Solomonson because they failed to provide the required documentation according to List B and List C of the I-9 Employment Eligibility
25 Verification form.

30 The application which my company uses, states clearly that failure to provide information or the intentional misrepresentation of oneself is grounds for immediate termination. The employees in question failed to properly complete the application and purposely failed to provide required information, thus, they were terminated.

35 In addition, Connecticut General Statutes required that all trade licensed personnel are required to provide proof of licensure to be employed in a trade that requires a state license. By failing to provide proof of their license, these employees were in violation of the statutes in question; my failure to obtain this information would require that I violate the statute. I chose not to do so.

40 I also take issue with the purported rationale for their termination. It was not, as has been alleged "because they joined the union and informed the employer that they wish to be represented by the Union." At the time of hiring, unbeknownst to me, these employees were already members of the union. I could not have fired them for joining something that they were members of before they came to my company. They were terminated for failing to follow federal law in regards to I-9 requirements. There is proof positive of that statement in their personnel records; any other excuse that they choose
45 to create is simply not the truth.

50 The employees listed in Complaint 34-CA-11371, Mr. Bramanti, Richardson, Solomonson, Lacy and Zajac were terminated during their probationary period, which under Connecticut law does not require a reason for dismissal. Even given that a probationary employee can be terminated without cause, the reality is that when they were terminated I was unaware of their union organization attempt. It was not until AFTER they were terminated that I received a letter stating that they wished union

representation. Given that they were already terminated, that request had no influence on the decision.

Mr. Benjamin Holden was terminated for a violation of a very clear company policy. Upon hiring all employees are notified that a discussion regarding hourly wages is cause for dismissal. Mr. Holden chose to discuss his hourly wage with other employees during the work day, in clear violation of the company policy. He was terminated for violation of that policy.

Findings of Fact

I. Jurisdiction

The Respondent does not dispute, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. Further, in a representation matter at 34-RC-2169 in which the Respondent/Employer did not appear, the Region asserted jurisdiction over the Respondent/Employer based upon the purchasing of materials valued in excess of \$50,000 from Pittsburgh, Pennsylvania, which materials were received at its job site in Manchester, Connecticut.

II. Labor Organization Status

The Respondent does not dispute, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Facts

The Respondent is a nonunion electrical contractor in the State of Connecticut. During the period in question, the last six months of 2005, two of the larger jobs that it was working on were the Dick's job site and the Dunkin Donuts job site. Unbeknown to the Respondent, since in about July, the Union was aware of these job sites and was attempting to organize the Respondent's employees by sending some of its out of work members to apply to work for the Respondent as salts. Holden, who has been a Union member for about eleven years, testified that in July, John Lurate, the Union organizer asked him to try to organize the Respondent's employees. He called the Respondent at the Dunkin Donut job site on July 18 and met with Jeffs at the job site. They talked about Holden's wages, and Jeffs questioned him about whether two prior employers were unionized; Holden told him that one was and the other wasn't, and Jeffs said that he had no interest in being a union contractor. Holden told him: "I was there just to work" and began working for the Respondent a week later. Holden is an electrician licensed in the State of Connecticut. His license expires yearly on September 30 and in 2005 he was remiss and did not renew it until November 25. About two weeks prior to this renewal, he notified Jeffs of the situation and assured him that it would be renewed. Upon being hired he provided the Respondent with all forms of identification that were requested, driver's license and his State electrical license. He also completed an I-9 form. He began working for the Respondent at about that time and worked at numerous job sites, including Dick's, a condo job and a residential job in Massachusetts.

Bramanti, who has been a Union member for twenty three years, testified that at a Union meeting at the end of November, Lurate asked him to call the Respondent to try to get a job and to organize its employees. On about November 30, he called Jeffs and asked him if he was hiring at the Dick's job site, and Jeffs asked him if he had an electrical license and he said that he did. Jeffs jokingly said that he was hired, but told him to go to the Dick's job site to be

interviewed by Lord, which he did. Lord asked him about his work experience and how long he had his license. Bramanti told him that he would like to be paid \$27 an hour and Lord said that he could probably start him at \$21 an hour. Bramanti asked, "How about \$25?" and Lord said that he would check with Jeffs and get back to him. Bramanti later called Lord, who told him to start working on the following Monday, and he began working on December 5. He testified that on his first day of employment with the Respondent he asked Lord for the paperwork that was required, but Lord said that he didn't have it. On the following day, either Lord or his foreman told him to go to the trailer to complete the paperwork, and while there he met Jeffs, and he gave Jeffs his driver's license and electrical license, and Jeffs made copies of them. Bramanti filled out an employment application and an I-9 form and asked Jeffs, "Is this okay?" and Jeffs said, "Yes, that's fine." On his first day he reminded Lord that he wanted to be paid \$25 an hour, and Lord told him that he would start at \$22 and in two weeks he would get an additional two dollars an hour.

Lacy, who has been a Union member for ten years, was asked by Lurate at about the end of October if he would be interested in organizing a nonunion shop and he said that he would. Lurate gave Lacy the name of a few companies, one of which was the Respondent. He called the Respondent, left a message and Jeffs called him back and they arranged to meet at about the end of October. At that time, he met with Jeffs and Lord. Lord, who did most of the talking at the interview, asked him about his work experience and he told them of his ten years employment as an electrician. After being hired, he gave them his state license and driver's license, and completed an I-9 form. In addition, he signed an Employment Agreement setting forth a \$21 an hour wage rate, and a list of holidays, medical, vacation and other benefits and rules.

David Bellomo, who has been a Union member for eleven years, testified that when he went to sign the Union's out-of-work book in about November Lurate asked him if he would like to organize nonunion contractors and he said that he would. Lurate gave him the Respondent's telephone number and he called and was told to call again the following week, which he did. At that time, a meeting was arranged at the Dick's job site, where he met with Jeffs and Lord in about mid-November. They asked about his work experience and prior employers and he was hired. He asked for the employment forms, but it wasn't until a few days later that he was provided with the forms to complete. He testified that he gave them a copy of his electrical and driver's licenses, and completed an Employment Application and an I-9 form.²

Zajac, who has been a Union member for eleven years, was at the Union hall signing the out-of-work list when Lurate asked him if he would help organize nonunion employers and he said that he would. Lurate asked him to try to get a job with the Respondent, and on about December 16, he went to the Respondent's job trailer and met with Lord. He introduced himself and said that he was an electrician looking for work. Lord asked him to fill out an application and when he did so he asked Lord if they were hiring and he said that they were. Zajac asked if there were any openings, and Lord said that if he fired somebody, he would have an opening. Later that afternoon Zajac received a telephone call from Jeffs saying that he heard from Lord that he was looking for a job, and Zajac said that he was. Jeffs said that Lord told him that he had to hire Zajac because he seemed like a guy who knew what he was doing. Jeffs told him that he would be paid \$21 an hour, that he should report for work on Monday, and that he was the last person that he was hiring at that point. On about his second day of employment with the Respondent, Zajac gave them his driver's license and electrical license, and filled out (but did

² Although these forms were subpoenaed by Counsel for the General Counsel, they were not produced by the Respondent.

not sign or date) an I-9 form.

Richardson, who has been a Union member for thirty seven years, was asked by Lurate if he would help organize nonunion employers in the area and he gave Richardson the Respondent's telephone number. He called the number and left a message that he was an electrician looking for work. On December 12, he received a call from Jeffs who said that he would be at the job site at about lunch time, and if he was still interested in employment he should come to the site and fill out an application. Richardson went to the site, met with Jeffs, filled out an application and a W-2 form, and Jeffs directed him to speak to Lord. Lord asked him about his prior employers and Richardson told him that he wanted to earn \$30 an hour. Lord told him that was a little high, and when Richardson told him that he would settle for \$25 to start with, Lord said, "I'll give you \$24 and in a couple of weeks I'll give you another dollar." He began working for the Respondent on December 19. He completed an Employment Application and an I-9 form and when Lord and Jeffs failed to ask for any identification, he asked them, "Don't you want to see any ID or my license?" and Jeffs said, "It's not necessary. I have a computer."³

Sometime between December 21 and December 27, Holden, Bramanti, Lacy, Solomonson, Bellomo and Richardson met with Lurate and agreed that Holden would give either Jeffs or Lords a letter on Tuesday, December 27, the day after the Christmas holiday. The letter, written and signed by Lurate and addressed to Jeffs, states:

The purpose of this correspondence is to advise you that the International Brotherhood of Electrical Workers, Local 35 will be organizing your company. The Local Union has designated the following individuals as its organizers: James Bramanti, Benjamin Holden III, Christopher J. Lacey, Harry Richardson, Joshua Solomonson and Steve Zajac.

If you have any questions or if I can be of any assistance, please do not hesitate to contact me.

Early on the morning of December 27, Lurate gave the letter to Holden who took it to the job site. Sometime shortly before 7 a.m., while he was standing with Solomonson, Lacy, Richardson and Zajac, he saw Lord and handed him the letter saying, "We are here to organize this company." Without opening the envelope, Lord threw the letter back at him and said, "Not my company." Holden handed the letter to him, again, and said that they were there to organize the company and that they could discuss it during non-working hours. Lord told Holden, "well, you're fired anyways." Holden asked: "I'm fired?" and Lord said, "Yes, you're fired for discussing your wages with Mr. Bellomo." Lord also said that he had no intention of having his company unionized. When Bramanti reported for work on December 27 he went downstairs to get his tools to begin work. Lacy, who was his work partner that day told him that Holden had given the letter to Lord and had been fired. Lord came downstairs and spoke to Lacy, and then walked over to Bramanti, who asked about obtaining a certain tool. Lord told him not to worry about the tool: "You guys aren't wanted on this site anymore." When Bramanti asked why, Lord said, "Because you guys are Union and you're not going to organize my shop. You got your numbers wrong." Bramanti picked up his tools and left the site. Shortly thereafter, he received an undated

³ Robert Corrado, who is employed by the International Union, IBEW, testified that the Connecticut Department of Consumer Protection has a website that pertains to licenses held by individuals. If you enter the individual's name, the site will list the license, if any, held by that individual. Through this website, he produced ELC-E2 Electrical Unlimited Journeyman licenses for Zajac, Richardson, Lacy, Bramanti and Solomonson, the only discriminatee herein who did not testify.

letter from the Respondent stating: "Your services are no longer needed. Effective immediately you are hereby terminated. Your payroll check will be sent to your last known address."

Lacy went to work after witnessing Lord fire Holden. Shortly thereafter, Lord approached him and told him, "You'd better check your math because you don't have enough numbers to organize the company." He then told Lacy to get his stuff and leave. Lacy attempted to shake Lord's hand, but Lord refused and Lacy left the site. A day or two later, Lacy received an identical termination letter to Bramanti's. Bellomo attended the Union meeting where the letter was discussed and it was agreed that his name would not be mentioned in the letter. Sometime on the morning of December 27, after the employees were fired, he told Lord that he heard that he fired Holden and said, "If you fire him, you have to fire me." Lord showed him the letter and said that the Union was trying to organize the company and that he didn't like the Union. He also said that he was trying to contact Jeffs. At about that time he contacted Jeffs and told him about the letter, with the names of the employees listed, saying, "I'm thinking about walking these guys off. I don't want them on this job site." At that point, Bellomo walked away. As he was walking, he met Solomonson who was coming out of the bathroom, and warned him of what was happening. Just then, Lord approached them and told Solomonson, "Pick up your tools and come on. Follow me and get out of here." Sometime that afternoon, while Bellomo was with Jeffs and Lord in Respondent's trailer, Jeffs said that if he went union, they would bankrupt him and he would have to close his doors. He also said that he couldn't afford Union wages and would rather just close his doors than become Union.

Zajac was present at about 6:45 a.m. on December 27 when Holden handed the letter to Lord, saying, "We're here to organize Jeffs Electric." Lord "looked at the letter," and handed it back to Holden, who handed it back to Lord. Lord threw it on the floor, and said, "Not on my job. You discussed wages with another employee on the job, which is grounds for termination. You're fired, pack up your fucking tools, you're all done." Holden did not reply, packed up his tools and left. Zajac and Richardson, his partner, then went inside the building, got their tools, and began working. About forty five minutes later, Lord approached them and told them to pack up their tools. Richardson asked him what was going on, and Lord said, "Your names are on the letter so you have to leave." Richardson asked if they were being fired or just being sent home for the day, and Lord said that they would be contacted by somebody later in the day. Lord also told them to check their math and do the numbers: "You don't have the numbers here to organize us." Zajac and Richardson then left. At about 5:00 that day Zajac received a phone call from Jeffs asking: "Why are you trying to organize me?" Jeffs also told Zajac to check his math and do the numbers because he didn't have the numbers to organize the Respondent. Zajac asked Jeffs if he still had a job and was he to report to work the following day and Jeffs said that he didn't know, that he would hear back from him. Zajac subsequently received the same undated letter from the Respondent stating that his services were no longer needed and that he was terminated.

Richardson was also present at the Union meeting where the letter to the Respondent was prepared. The participants agreed that the letter would list six names, but not name Bellomo, who was "under cover." Richardson observed Holden handing the letter to Lord, who was in his car at the time, saying, "This is from Local 35 and these members here are on an organizing campaign." Lord told him, "You're fired. Pick up your tools and get out." Richardson then said to Zajac, "Let's make ourselves scarce" and got their tools and went to work. About thirty minutes later, Lord approached them and said, "Pick up your tools. You guys are getting off the job." Richardson asked him what the problem was, and Lord said, "There's not going to be any organizing here. I've been screwed enough by these unions and I'm not going to let it happen, not on my jobs." Richardson said that they weren't there to hurt him, and Lord said, "Yes you are." Richardson and Zajac asked if they were fired and Lord said, "Hank will call you

later. But right now get out. Get your tools and get off the job.” Lord also told them that that they didn’t have their numbers right: “You don’t have 50% of the vote.” Richardson received the same termination letter as the other employees. The envelope containing this letter is postmarked December 28. Solomonson, the only alleged discriminate who did not testify, was also sent a termination letter by the Respondent on December 28.

In addition to the testimony about the delivery of the letter to Lords on the morning of December 27, Vicki Dougherty, who is the office manager for the Union, testified that on the morning of December 27, at 7:36 a.m., she faxed the letter to the Respondent’s office.

In answer to questions from Counsel for the General Counsel, Jeffs, as a Section 611C witness, testified that on December 28, he went to the Dick’s job site, and asked each of the remaining employees, on an individual basis, if they had been approached by any employee about the Union and asked if they had been given anything to sign by the Union, and each one answered no.

As stated above, the Complaint alleges, and the Respondent denies, that Lord is a supervisor and agent of the Respondent within the meaning of Section 2(11) and (13) of the Act. Respondent’s listing of employees for the week of December 17, states that Lord’s base pay was \$26 an hour; the other employees’ base pay ranged from \$20 to \$24 an hour. In addition to the fact that he fired Holden, on the spot on December 27, without any input from Jeffs, and told the other five employees to leave the job site, there was a substantial amount of testimony from the discriminatees and Bellomo regarding his supervisory status. Lord had a business card with the Respondent listing his job title as “Construction Supervisor.” He also had an e-mail address at the Respondent, which was listed on the card. None of the individuals who testified had either a business card or an e-mail address with the Respondent. The witnesses testified that Lord did not work with tools like they did and when they had to leave work early, they told Lord, who gave them permission without checking first with anybody else. Holden testified that Lord told him that he would rather he asked him about these matters because Jeffs was busy bidding for jobs. Holden testified further that Lord did hiring and firing of employees, laid out the jobs, instructed the foremen about assigning work to the electricians, and attended job meetings at the job site. Bramanti testified that Lord “ran the job” at the Dick’s job site: “He was in charge of everybody.” Lord assigned him to jobs, and walked around “...with a cup of coffee looking at everybody’s work---pretty much that’s all that I saw him do.” Lacy testified that Lord was the “general foreman” on the job site, laying out the work and giving it to the foremen. He did not perform electricians’ work and did not work with tools. Bellomo testified that Lord, “Drank a lot of coffee, went to ...job meetings with the other trades.” Lord sat in the trailer and did the payroll for the job site. About a week after Bellomo began working for the Respondent, Lord asked him if he would like to be a lead man and what area he would like. Bellomo said that he would, and would like to work in the basement, and that change became effective immediately. Lord also transferred employees from one job to another. Zajac testified that Lord attended job meetings with the general contractor on the job, interpreted the job prints and told the employees what to do and how to do it. Richardson testified that Lord attended job meetings with the general contractor and worked with the job prints in the trailer.

IV. Analysis

It is initially alleged that on about July 18, Jeffs interrogated employees concerning their Union activities, in violation of Section 8(a)(1) of the Act. In support of this allegation, Holden testified that when he was interviewed for employment by Jeffs on about July 18, after discussing wages, Jeffs asked him whether his two prior employers were unionized and when Holden said that one was and the other wasn’t, Jeffs said that he had no interest in being a

union contractor. In *Active Transportation*, 296 NLRB 431, fn. 3 (1989), the Board stated: “The Board has long recognized that, under the totality of circumstances test, an applicant may understandably fear that any answer he might give to questions about union sentiments posed in a job interview may well affect his job prospects.” Although Jeffs’ question was not whether
 5 he was a member, or supporter, of the Union, the question whether his prior employers were unionized, followed by the statement that he had no interest in being a union contractor, was clearly coercive. *Rossmore House*, 269 NLRB 1176 (1984).

It is next alleged that Jeffs, at the Dick’s job site on about December 27, threatened
 10 employees with closing the business because of their Union activities, and on about December 28 interrogated employees concerning their Union activities. The uncontradicted credible testimony establishes that on December 27 Jeffs told Bellomo, unaware that he was a Union salt, that if the Union came in, it would bankrupt him, and that he couldn’t afford Union wages and would close his doors rather than being a Union company. This is clearly a threat in
 15 violation of Section 8(a)(1) of the Act. *Gissel Packing Co. v. NLRB*, 395 U.S. 575 (1969). Further, Jeffs’ testimony that on December 28 he asked each of the remaining employees if they had been approached by the Union and if they had been given anything to sign by the Union constitutes coercion in violation of Section 8(a)(1) of the Act.

It is further alleged that the Respondent maintained an overly broad policy prohibiting
 20 employees from discussing wages and other terms and conditions of employment. In *Triana Industries*, 245 NLRB 1258 (1979), the Board stated that Section 7 “encompasses the right of employees to ascertain what wage rates are paid by their employer, as wages are a vital term and condition of employment.” See also *American Lebanese Syrian Associated Charities, Inc.*,
 25 277 NLRB 1532 (1986). The uncontradicted credible evidence, as well as the Respondent’s letter answer to the Complaint, establishes that on December 27, Lord told Holden that he was fired for discussing his wages with Bellomo. Such an absolute prohibition against discussing wages violates the Act. *Blue Cross-Blue Shield of Alabama*, 225 NLRB 1217 (1976). It is next
 30 alleged that the Respondent, by Lord, on about December 27, informed employees that they were being subject to adverse employment actions because of their Union activities. It does not require any case citations to establish that Lord was a supervisor within the meaning of Section 2(11) of the Act. On the morning of December 27, before he had an opportunity to speak to Jeffs, he discharged Holden, although it is not clear whether he discharged the other employees before, or after, speaking to Jeffs. In addition, he has his own business card and e-mail address
 35 provided by the Respondent identifying him as the construction supervisor, he earns more than the other employees, directs their work, and attends meetings as Respondent’s representative with the general contractor and, apparently does not perform any electrical work. In addition, he had the authority to establish the starting pay rates for new employees. However, the record herein contains no evidence that he informed employees that they were being subject to
 40 adverse employment actions because of their Union activities as alleged in the Complaint. I therefore recommend that this allegation be dismissed.

It is next alleged that on December 27 the Respondent terminated Lacy, Bramanti,
 45 Richardson, Zajac and Solomonson because of their Union activities and Holden because of his Union activities and because he discussed his wages with other employees. In *Wright Line*, 251 NLRB 1083 (1980) the Board set forth the burdens in discrimination cases such as this. Counsel for the General Counsel must first make a *prima facie* showing sufficient to support the inference that the discriminatee’s protected conduct was a “motivating factor” in the employer’s decision. If Counsel for the General Counsel satisfies this burden, the burden then shifts to the
 50 Respondent to demonstrate that it would have taken the same action even in the absence of the protected conduct. There can be no question that Counsel for the General Counsel has satisfied her initial burden herein. Lacy began working for the Respondent on November 7; Bramanti, on

December 5; Solomonson, on December 12, and Richardson and Zajac on December 19, yet it was not until the morning of December 27, when Holden told Lord that they were there to organize the Respondent's employees and gave him the letter saying the same thing, and the Union, almost, simultaneously faxed the letter to the Respondent's office, that the employees
 5 were fired. Holden, who had been employed by the Respondent for five months, was fired immediately after giving the letter to Lord, who told him that he had no intention of having his company unionized. Although Lord said that he was being discharged for discussing his wages with Bellomo (an obvious violation of Section 8(a)(1) of the Act) the timing makes it equally plausible that he was terminated for his Union activities as well. Later that morning, one by one,
 10 Bramanti, Lacy, Richardson, Zajac and Solomonson were also terminated. When Lord told Bramanti and Lacy that they were to leave, he told them that it was because they were Union and were not going to organize his shop. When Lord told Zajac and Richardson to leave, he told them that it was because their names were on the letter that he was given by Holden that morning, and that he wasn't going to let the Union organize his shop. In addition, Bellomo heard
 15 Lord tell Jeffs early that morning that he didn't want the employees on the job site. Later that day, while Bellomo was with Jeffs and Lord, Jeffs said that he couldn't afford the Union and they would bankrupt him and he would have to close his doors. If there was any doubt that their Union support caused their discharges, that doubt is eliminated by the fact that of this group only Bellomo, whose name does not appear in the letter, was not fired.

20 The burden therefore shifts to the Respondent to establish that it would have fired the six employees even absent their Union activity. One aspect of the Respondent's defense is that it was unaware of the discriminatee's Union activity. This is clearly untrue. When Holden gave Lord the letter on the morning of December 27 and told him that they were there to organize the
 25 shop, Lacy, Zajac and Richardson were present with him. In addition, when and if he opened the letter he saw all five names, as did Jeffs when he received the faxed letter that morning. Therefore, it is clear, that on the morning of December 27, Jeffs and Lord knew the identity of all the Union supporters. Respondent's other defense is that Bramanti, Lacy, Richardson and Solomonson were fired because they failed to provide the required documentation provided by
 30 law. This defense is clearly pretextual. Although it is not entirely clear which employees, if any, did not complete an I-9 form, the evidence establishes that Solomonson, Lacy, Zajac, Holden, Bramanti and Richardson did complete I-9 forms. The evidence also establishes that the employees all turned over, or offered to turn over, their state electrical and driver's license to the Respondent. Respondent's defense herein is clearly without merit. I therefore find that the
 35 Respondent terminated Lacy, Bramanti, Richardson, Zajac and Solomonson on about December 27 because of their Union activities in violation of Section 8(a)(3) of the Act, and fired Holden because of his Union activities and because he discussed terms and conditions of employment with fellow employees, all in violation of Section 8(a)(1) and (3) of the Act.

40 **Conclusions of Law**

1. The Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

45 2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. Henry Jeffs and Christopher Lord have been supervisors of the Respondent within the meaning of Section 2(11) of the Act as well as agents of the Respondent within the meaning of
 50 Section 2(13) of the Act.

4. The Respondent, by Jeffs, violated Section 8(a)(1) of the Act in the following manner:

(a) Interrogating employees concerning their Union activities.

(b) Threatening its employees with closure of the business due to their Union activities.

5 5. The Respondent violated Section 8(a)(1) of the Act by maintaining an overly broad policy prohibiting employees from discussing their terms and conditions of employment.

10 6. The Respondent violated Section 8(a)(1)(3) of the Act by terminating employees Christopher Lacy, James Bramanti, Harry Richardson, Steven Zajac and Joshua Solomonson on December 27 because of their activities on behalf of, and support for, the Union.

15 7. The Respondent violated Section 8(a)(1) and (3) of the Act by terminating Benjamin Holden because of his activities on behalf of, and support for, the Union, and because he discussed his wages with other employees.

8. The Respondent did not violate the Act as alleged in Paragraph 8 of the Complaint.

The Remedy

20 Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. As the Respondent discriminatorily
25 discharged Lacy, Bramanti, Richardson, Zajac, Solomonson and Holden on December 27, 2005, it must offer them reinstatement to their former positions of employment, or if those jobs no longer exist, to substantially equivalent positions, without loss of seniority or other rights and privileges previously enjoyed. In addition, Respondent shall make them whole for any loss of earnings and other benefits that they suffered as a result of the discrimination, computed on a
30 quarterly basis from the date of their discharges to the date of a full unconditional offer of reinstatement to their former positions, less any interim earnings as set forth in *F.W.Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

35 On these findings of fact, conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

40 The Respondent, Jeffs Electric, LLC, its officers, agents, successors and assigns, shall:

1. Cease and desist from

(a) Interrogating employees concerning their Union activities.

45 (b) Threatening its employees with closure of the business due to their Union activities.

50 ⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Maintaining an overbroad policy prohibiting employees from discussing wages and other terms and conditions of employment.

5 (d) Discharging or otherwise discriminating against employees for supporting the Union or otherwise engaging in Union activities, or for discussing their wages and other terms and conditions of employment with other employees.

10 (e) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

15 (a) Within 14 days of the date of this Order, offer Lacy, Bramanti, Richardson, Zajac, Solomonson and Holden full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth above in the remedy section of this decision.

20 (b) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

25 (c) Rescind the rule prohibiting employees from discussing their wages and other terms and conditions of employment with other, and notify its employees that this has been done.

30 (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

35 (e) Within 14 days after service by the Region, post at its facility in Brooklyn, Connecticut and at every job site on which its employees are performing work, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and

50 ⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 18, 2005.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the Consolidated Complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., May 12, 2006.

Joel P. Biblowitz
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT interrogate our employees regarding their support for, or activities on behalf of International Brotherhood of Electrical Workers, Local 35, AFL-CIO ("the Union"), or any other labor organization.

WE WILL NOT threaten our employees with closure of the business because of their support for, and activities on behalf of, the Union or for discussing their wages with other employees.

WE WILL NOT discharge or otherwise discriminate against our employees because of their membership in, or support for, the Union.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL rescind the rule prohibiting our employees from discussing their wages and other terms and conditions of employment with others and **WE WILL** notify our employees that this has been done.

WE WILL within 14 days from the date of this Order, offer Christopher Lacy, James Bramanti, Harry Richardson, Stephen Zajac, Joshua Solomonson and Benjamin Holden full reinstatement to their former jobs or if those jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges previously enjoyed, and **WE WILL** make them whole for any loss that they suffered as a result of the discrimination against them.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of Lacy, Bramanti, Richardson, Zajac, Solomonson and Holden, and **WE WILL**, within 3 days thereafter, notify each of them, in writing, that this has been done and that the discharges will not be used against them in any way.

JEFFS ELECTRIC, LLC

Dated _____ **By** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

280 Trumbull Street, 21st Floor
Hartford, Connecticut 06103-3503
Hours: 8:30 a.m. to 5 p.m.
860-240-3522.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3528.

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